IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 3937 of 2002

Between:

Arethoti Nageswarao Rao, S/o. Atchaiah @ Tirupathaiah, 21st Ward, Sanjay Gandhi Colony, bapatla, Guntur District.

..... PETITIONER

AND

1. The Air Chief Marshal, Air Headquarters, Vayu Bhavan, New Delhi
2. The Air Officer, Command-in-Chief, Southern Command, Air Force, Kowdiar, Trivendrum
3. The Commanding Officer, 401, A.F.Station, Suryalanka, Bapatla, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of respondents in not considering the case of the petitioner for appointment on compassionate grounds as illegal, arbitrary and in violation of Articles 14, 16 and 21 of Constitution of India and further direct the respondents to consider the case of the petitioner and appoint in any suitable post on compassionate grounds without insisting “No objection Certificate” from his step mother since there is no rival claim by her and pass such other order or orders.

Counsel for the Petitioner:MR.GANDURI NAGESWARA RAO

Counsel for the Respondents: J.VENKATESWARA REDDY

The Court made the following :

O R D E R:

The case of the petitioner is that he is the son of late Atchaiah, through his first wife. His father worked as Lusker in the 3rd respondent-Commanding Officer, Guntur. While his father was on duty in the office of the 3rd respondent, he died on 23.12.1992. After the death of his father, the petitioner filed O.P.No.2 of 1994 on the file of the Principal District Munsif Magistrate, Bapatla, for issuing Succession Certificate with regard to the succession of the property. On 28.11.1996, the learned Munsif issued Succession Certificate to the petitioner recognizing the petitioner as the son of late Atchaiah and declared that he is entitled to 1/3rd share in the petition schedule property. There after, the petitioner made a representation before the 3rd respondent seeking appointment on compassionate grounds, but the same was not considered. Hence, the petitioner filed W.P.No.9183 of 1995 before this Court and this Court by order, dated 27.11.1996 directed the respondents to consider the case of the petitioner and dispose of his application with regard to his appointment on compassionate grounds in accordance with law. There after, the petitioner made another representation, dated 13.09.2000 seeking compassionate appointment and the same was forwarded to the 1st respondent in the year 2001. The 1st respondent addressed a letter to the petitioner, dated 20.02.2001 asking the petitioner to provide particulars with regard to his willingness to accept either Group-C or Group-D post in the Corporation and to serve anywhere in India. The petitioner was also asked to

produce ‘No Objection Certificate’ from all the major dependants of the deceased employee late Atchaiah. The petitioner fulfilled all the formalities, except filing of ‘No Objection Certificate’ from his stepmother. As the petitioner has failed to produce ‘No Objection Certificate’, his application was not considered. Hence, this writ petition is filed.

The learned counsel for the petitioner submits that when there is a rival claim by more than one member of the deceased employee, it is for the respondents to consider the rival claims and take appropriate decision for giving appointment to the entitled member of the deceased family. The petitioner being an elder in the family, he is entitled to appointment on compassionate grounds.

There is no dispute with regard to the entitlement of the petitioner for his appointment on compassionate grounds in any suitable post in the respondent Corporation. From a letter filed by the 2nd wife of the deceased it is seen that the petitioner is not a family member of the deceased. Admittedly, as the petitioner is a member of the family, the Court below issued a Succession Certificate to the petitioner and as per the said Certificate, he is entitled to 1/3rd of the property. Hence, it cannot be said that the petitioner is not a family member of the deceased and he is not entitled for the post.

Having regard to the facts and circumstances of the case, the writ petition is disposed of directing the respondents to consider the case of the petitioner without being influenced by the said objection of the step mother of the petitioner and pass appropriate orders in accordance with law. No costs.

07.09.2004

tjs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Air Chief Marshal, Air Headquarters, Vayu Bhavan, New Delhi

2.The Air Officer, Command-in-Chief, Southern Command, Air Force, Kowdiar, Trivendrum

3.The Commanding Officer, 401, A.F.Station, Suryalanka, Bapatla, Guntur District.

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